



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Kienke at el.  
Title: RECLINER MECHANISM  
Appl. No.: 10/549,554  
International Filing Date: 3/4/2004  
371(c) Date: 9/19/2005  
Examiner: Anthony D. Barfield  
Art Unit: 3636  
Confirmation Number: 3782

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent.

The Patent Office determined that the patent was entitled to 399 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op.

at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 697 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 727 days

(b) Total Applicant delay: 30 days

Final PTA Determination: 697 days

Applicants therefore respectfully request that the patent be accorded 697 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 26, 2009

By 

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5349  
Facsimile: (202) 672-5399

Andrew E. Rawlins  
Attorney for Applicant  
Registration No. 34,702

# Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 026032-4923  
Application Number: 10/549554  
Patent Number: N/A

|                              | Event Description                                     | Event Date | Days from Filing | PTO Days | Applicant Days |
|------------------------------|---|------------|------------------|----------|----------------|
| <a href="#">CLOSE WINDOW</a> | <a href="#">ALL CASES</a> <a href="#">SELECT CASE</a> |            |                  |          |                |
| <a href="#">Edit Delete</a>  | Priority Date   | 03/19/2003 | -915             |          |                |
| <a href="#">Edit Delete</a>  | International Filing Date                             | 03/04/2004 | -564             |          |                |
| <a href="#">Edit Delete</a>  | National Stage Entry (All 371(c) Requirements Met)    | 09/19/2005 | 0                |          |                |
|                              | PCT National Stage Commencement Date                  | 09/19/2005 | 0                |          |                |
|                              | 14 month From Application date                        | 11/19/2006 | 426              |          |                |
| <a href="#">Edit Delete</a>  | Non-Final Office Action                               | 01/22/2008 | 855              | 429      |                |
| <a href="#">Edit Delete</a>  | Non-Final Office Action Rsp. Rcv'd at PTO             | 04/22/2008 | 946              |          |                |
| <a href="#">Edit Delete</a>  | Final Office Action                                   | 08/04/2008 | 1,050            |          |                |
|                              | 3 Year Period Starts                                  | 09/19/2008 | 1,096            |          |                |
|                              | Final Office Action + 3 months                        | 11/04/2008 | 1,142            |          |                |
| <a href="#">Edit Delete</a>  | Final Office Action Response Received at PTO          | 12/04/2008 | 1,172            |          | 30             |
| <a href="#">Edit Delete</a>  | Notice of Allowance                                   | 12/31/2008 | 1,199            |          |                |
|                              | Projected Patent Grant Date                           | 07/14/2009 | 1,394            | 298      |                |
|                              |   | Totals:    |                  | 727      | 30             |
|                              |   | PTA:       |                  | 697      |                |

Created and maintained by  
**FOLEY**  
FOLEY & LARDNER LLP

Version: 3.02.05

LOGIN: Raquel Garcia

IP: 10.14.52.227

Foley & Lardner LLP